

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 190**

Introduced by Avery, 28; Giese, 17; Karpisek, 32; Pirsch, 4.

Read first time January 12, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the DNA Identification Information Act; to  
2 amend sections 29-4102, 29-4103, and 29-4106, Reissue  
3 Revised Statutes of Nebraska; to provide for the  
4 collection of DNA samples from individuals convicted of  
5 felony offenses; to provide for applicability; and to  
6 repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-4102, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-4102 The Legislature finds that DNA data banks are  
4 an important tool in criminal investigations, in the exclusion  
5 of individuals who are the subject of criminal investigations or  
6 prosecutions, in deterring and detecting recidivist acts, and in  
7 locating and identifying missing persons and human remains. Several  
8 states have enacted laws requiring persons convicted of certain  
9 crimes, especially sex offenses, to provide genetic samples for DNA  
10 typing tests. Moreover, it is the policy of this state to assist  
11 federal, state, and local criminal justice and law enforcement  
12 agencies in the identification and detection of individuals in  
13 criminal investigations and in locating and identifying missing  
14 persons and human remains. It is in the best interest of this  
15 state to establish a State DNA Data Base for DNA records and  
16 a State DNA Sample Bank as a repository for DNA samples from  
17 individuals convicted of felony ~~sex offenses and other specified~~  
18 offenses and from individuals for purposes of assisting in locating  
19 and identifying missing persons and human remains.

20           Sec. 2. Section 29-4103, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           29-4103 For purposes of the DNA Identification  
23 Information Act:

24           (1) Combined DNA Index System means the Federal Bureau  
25 of Investigation's national DNA identification index system that

1 allows the storage and exchange of DNA records submitted by state  
2 and local forensic DNA laboratories;

3 (2) DNA means deoxyribonucleic acid which is located in  
4 the cells and provides an individual's personal genetic blueprint.  
5 DNA encodes genetic information that is the basis of human heredity  
6 and forensic identification;

7 (3) DNA record means the DNA identification information  
8 stored in the State DNA Data Base or the Combined DNA Index System  
9 which is derived from DNA typing test results;

10 (4) DNA sample means a blood, tissue, or bodily fluid  
11 sample provided by any person covered by the DNA Identification  
12 Information Act for analysis or storage, or both;

13 (5) DNA typing tests means the laboratory procedures  
14 which evaluate the characteristics of a DNA sample which are of  
15 value in establishing the identity of an individual;

16 ~~(6) Felony sex offense means a felony offense, or an~~  
17 ~~attempt, conspiracy, or solicitation to commit a felony offense,~~  
18 ~~under any of the following:~~

19 ~~(a) Kidnapping of a minor pursuant to section 28-313,~~  
20 ~~except when the person is the parent of the minor and was not~~  
21 ~~convicted of any other offense in this subdivision;~~

22 ~~(b) Incest of a minor pursuant to section 28-703;~~

23 ~~(c) Sexual assault in the first or second degree pursuant~~  
24 ~~to section 28-319 or 28-320;~~

25 ~~(d) Sexual assault of a child in the second or third~~

1 ~~degree pursuant to section 28-320.01;~~

2 ~~(e) Sexual assault of a child in the first degree~~  
 3 ~~pursuant to section 28-319.01;~~

4 ~~(f) Sexual assault of a vulnerable adult pursuant to~~  
 5 ~~subdivision (1)(c) of section 28-386; and~~

6 ~~(g) False imprisonment of a minor in the first degree~~  
 7 ~~pursuant to section 28-314, except when the person is the parent~~  
 8 ~~of the minor and was not convicted of any other offense in this~~  
 9 ~~subdivision;~~

10 ~~(7) (6) Law enforcement agency includes a police~~  
 11 ~~department, a town marshal, a county sheriff, and the Nebraska~~  
 12 ~~State Patrol, and the office of the Attorney General; and~~

13 ~~(8) Other specified offense means an offense, or an~~  
 14 ~~attempt, conspiracy, or solicitation to commit an offense, under~~  
 15 ~~any of the following:~~

16 ~~(a) Murder in the first degree pursuant to section~~  
 17 ~~28-303;~~

18 ~~(b) Murder in the second degree pursuant to section~~  
 19 ~~28-304;~~

20 ~~(c) Manslaughter pursuant to section 28-305;~~

21 ~~(d) Stalking pursuant to sections 28-311.02 to 28-311.05;~~

22 ~~(e) Burglary pursuant to section 28-507 provided that the~~  
 23 ~~real estate is a dwelling place intended for human occupancy; or~~

24 ~~(f) Robbery pursuant to section 28-324; and~~

25 ~~(9) (7) Released means any release, parole, furlough,~~

1 work release, prerelease, or release in any other manner from a  
2 prison, a jail, or any other detention facility or institution.

3 Sec. 3. Section 29-4106, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 29-4106 (1) A person who is convicted of a felony ~~sex~~  
6 offense ~~or other specified offense~~ on or after ~~July 14, 2006,~~  
7 the effective date of this act, who does not have a DNA sample  
8 available for use in the State DNA Sample Bank, shall have a DNA  
9 sample collected:

10 (a) Upon intake to a prison, jail, or other detention  
11 facility or institution to which such person is sentenced. If the  
12 person is already confined at the time of sentencing, the person  
13 shall have a DNA sample collected immediately after the sentencing.  
14 Such DNA samples shall be collected at the place of incarceration  
15 or confinement. Such person shall not be released unless and until  
16 a DNA sample has been collected; or

17 (b) As a condition for any sentence which will not  
18 involve an intake into a prison, jail, or other detention facility  
19 or institution. Such DNA samples shall be collected at a detention  
20 facility or institution as specified by the court. Such person  
21 shall not be released unless and until a DNA sample has been  
22 collected.

23 (2) A person who has been convicted of a felony ~~sex~~  
24 offense ~~or other specified offense~~ before ~~July 14, 2006,~~ the  
25 effective date of this act, who does not have a DNA sample

1 available for use in the State DNA Sample Bank, and who is still  
2 serving a term of confinement for such felony offense on ~~July 14,~~  
3 ~~2006,~~ the effective date of this act, shall not be released prior  
4 to the expiration of his or her maximum term of confinement unless  
5 and until a DNA sample has been collected.

6           Sec. 4. Original sections 29-4102, 29-4103, and 29-4106,  
7 Reissue Revised Statutes of Nebraska, are repealed.